

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

MARY L. SCHULTZ,)	
)	
Appellant,)	OSPI NO. 256-95
)	
vs.)	DECISION AND ORDER
)	
ARLEE SCHOOL DISTRICT #8-J,)	
)	
Respondent.)	

* * * * *

PROCEDURAL HISTORY

Mary Schultz is a teacher employed by Arlee School District #8-J [hereinafter Arlee or "the District"]. She is appealing Lake County Superintendent Joyce Decker Wegner's May 9, 1995, order dismissing her appeal of a grievance.

Ms. Schultz was hired by Arlee for school year 1991-92. She had two years teaching experience at the time but was placed at step three on the District's salary schedule. In 1991-92 several other new teachers with two years of teaching experience were also hired but were placed at step five on the salary schedule. Since their initial hiring all the teachers have received one additional step for each year of experience with the District.

During the 1994-95 school year, the District and the Arlee Federation of Teachers concluded negotiations on a new collective bargaining agreement [hereinafter "CBA"] covering that year.

In January, 1995, Ms. Schultz filed a grievance under the

terms of the 1994-95 CBA alleging a violation of an established practice of the District. The issue was her steps on the salary schedule. On February 9, 1995, the Arlee Trustees ruled in her favor on part of the grievance. They amended her 1994-95 teaching contract to give her two additional steps on the salary schedule. Her salary was adjusted retroactively to the beginning of the 1994-95 school year. She did not receive additional compensation for prior years, however.

She grieved the prior year compensation. That grievance was denied by the school board on March 16, 1995. She appealed to the Lake County Superintendent of Schools in what she characterized as "the fourth step of the grievance procedure." (April 11, 1995, letter from Mary Schultz to Superintendent Decker Wegner). The District responded with a letter to the County Superintendent dated April 24, 1995, and various attachments including the 1994-95 CBA.

The record does not show that the District disputed "the fourth step of the grievance procedure" position but the County Superintendent dismissed the grievance based on lack of jurisdiction. Ms. Schultz appealed to this Superintendent.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly

erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 786 P.2d 1164, 241 Mont. 274 (1990) and Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990).

The Lake County Superintendent's decision to dismiss the appeal is a conclusion of law. On review of orders dismissing appeals, this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976).

DECISION AND ORDER

The County Superintendent correctly concluded that Ms. Schultz's appeal should be dismissed. The Order is AFFIRMED.

MEMORANDUM OPINION

The County Superintendent did not rule on the substantive merits of the grievance; she ruled that she did not have jurisdiction to hear the matter. Except for a brief mention in her reply brief (discussed below) Ms. Schultz argues the merits of her grievance. That is not the issue on appeal, however. Both parties agree this dispute proceeded as a grievance under the procedure established in the 1994-95 CBA. The County Superintendent concluded that she did not have jurisdiction over CBA grievances. The issue on appeal is whether the County Superintendent's procedural ruling was correct.

For a County Superintendent to have jurisdiction to hold a hearing a petitioner must have a constitutional, statutory or caselaw grant of a hearing right. In this case Ms. Schultz does not have a right to a hearing. There is no statutory or constitutional right to a hearing on how many steps on the salary schedule a teacher is entitled. And, contrary to Ms. Schultz's position, the CBA did not state a process in which the county superintendent was "the fourth step in the grievance process."

A. Constitutional or statutory right to a hearing. The matter in dispute -- steps on the salary schedule -- is not a school controversy under Title 20 or a constitutionally protected interest. This dispute does not involve the diminution of a tenured teachers employment interests. The District is not reducing Ms. Schultz salary. The dispute is a labor grievance and, as discussed below, the terms of the parties CBA do not make the county superintendent part of the grievance process.

Absent a specific statutory or constitutional grant of a hearing right, the county superintendent does not have jurisdiction under Title 20 to hear a matter. As stated in Althea Smith v. Board of Trustees, Judith Basin County School District No. 12, OSPI 200-91, 11 Ed.Law 65 at 66 (1992), Cause No CDV-92-1331, First Judicial District, Lewis & Clark County, 12 Ed.Law 24 (1993) (affirmed on other grounds):

Unless a claimant has a case in controversy (contested case), the administrative process is not invoked and the county superintendent is without jurisdiction to hear the complaint and the complaint must be dismissed.

This remains the position of this Superintendent on the extent of the jurisdiction of state and county superintendents of schools and is consistently applied by the Office of Public Instruction. Virginia Bland v. Board of Trustees, School District No. 4, Libby, OSPI 205-92, 12 Ed.Law 76 (1993), Gwen Brott v. School District No. 9, Browning Public Schools, OSPI 234-94, 15 Ed.Law 24 (1996).

B. Hearing under caselaw. In Canyon Creek Education Association v. Yellowstone County School District No. 4, 785 P.2d 201, 241 Mont. 73, 9 Ed.Law 4 (1990), the Montana Supreme Court held that a county superintendent had jurisdiction to hear a claim for breach of the terms of a CBA.

The Lake County Superintendent correctly recognized that Ms. Schultz had no statutory or constitutional right to a hearing before the County Superintendent over a dispute about salary steps. She did not discuss whether the terms of the CBA included the County Superintendent in the grievance process but the parties' CBA made the trustees' decisions on grievances final.

The grievance procedure agreed to by the Arlee Federation of Teachers and the District in the 1994-95 CBA does not include the County Superintendent in the grievance process.¹ The County

¹ Section 39-31-306 (5) requires a CBA to contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. This section is effective for school years beginning July 1, 1996. The effect of this statute on county superintendent's jurisdiction over grievances is left for another appeal.

Superintendent correctly dismissed the appeal without a hearing on the merits.

The teacher in Canyon Creek alleged a breach of the CBA due to the School District's failure to comply with notice and layoff-rehire provisions in the CBA. The Supreme Court held that the question of breach of a CBA should have been initiated before a County Superintendent. In this case, however, Ms. Schultz does not allege breach of the CBA. According to the terms of the CBA she received more steps than required. Her issue was a grievance based on past practice, not breach of the CBA. She prevailed on her grievance that was timely -- her claim in 1994-95 that she should receive additional steps for the 1994-95 school year. She wants use the 1994-95 grievances process, however, to raise grievances from prior years.

Ms. Schultz's reply brief made only one reference to the issue that is actually on appeal -- "In the instant case, the collective bargaining agreement specifically provides that if a grievance is not resolved by the board of trustees, the matter may be appealed to the County Superintendent of Schools." This Superintendent has taken administrative notice of the parties' CBA. There is no provision for appealing a grievance to the county superintendent.

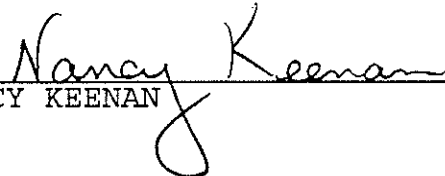
The grievance procedure agreed to by the parties is stated in Article II, Paragraph 2.3 of their CBA. It provides for three levels of review. The county superintendent was not

included as part of the process and does not have jurisdiction to hear the matter under the terms of the CBA. Virginia Bland v. Board of Trustees, School District No. 4, Libby, OSPI 205-92, 12 Ed.Law 76 (1993), John Pickart v. Dawson County (Montana) High School District, by and through its Board of Trustees, OSPI 210-92, 13 Ed.Law 8 (1994).

CONCLUSION

The County Superintendent dismissed this appeal without a motion from either party. County superintendents should raise the issue of jurisdiction whenever they question whether the petitioner has a right to a hearing on the matter on appeal. They should notify parties that jurisdiction is in question and give the parties an opportunity to file legal arguments if they wish.

DATED this 11 day of July, 1996.



NANCY KEENAN

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 12TH day of July, 1996, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:


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